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THE WHITE HOUSE

WASHINGTON

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December 19, 1981

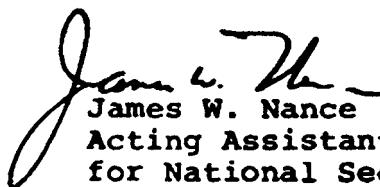
MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE SECRETARY OF COMMERCE
THE COUNSELLOR TO THE PRESIDENT
THE DIRECTOR OF CENTRAL INTELLIGENCE
THE UNITED STATES REPRESENTATIVE TO THE
UNITED NATIONS
THE UNITED STATES TRADE REPRESENTATIVE
THE CHIEF OF STAFF TO THE PRESIDENT
THE DEPUTY CHIEF OF STAFF TO THE PRESIDENT
THE CHAIRMAN, JOINT CHIEFS OF STAFF
THE ASSOCIATE DIRECTOR OF THE OFFICE OF
MANAGEMENT AND BUDGET FOR NATIONAL SECURITY
AND INTERNATIONAL AFFAIRS

SUBJECT: National Security Council Meeting

The President will chair a meeting of the National Security Council in the Cabinet Room of the White House on Saturday, December 19, 1981, from 11:30 - 12:30 p.m. There will be one agenda item: Poland.

A State Department paper which attempts to portray the agency views expressed during yesterday's Senior Interagency Group meeting is attached.

FOR THE PRESIDENT:


James W. Nance
Acting Assistant to the President
for National Security Affairs

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Review on December 19, 1987

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WSC Meeting on the Polish Situation

Overview

As the Polish government, with Soviet support, begins the second week of its crackdown on Solidarity, the U.S. faces several important choices. We need to be able to act with our Allies to penalize the Polish and Soviet governments for their actions to date, and to be prepared to cope with a range of contingencies, including massive repression by the Polish government and Soviet military intervention short of a full scale invasion.

The most immediate task is to make clear to the Polish and Soviet governments that their actions will not be cost free. The three attached papers discuss the economic issues involved in imposing costs on both governments. Decisions needed are as follows:

-- Rescheduling Polish Debt.

- Not to invoke the "exceptional circumstances" clause in the 1981 agreement
- Whether to communicate to the private banks U.S. government desire not to have default proceedings at this time

-- Food Aid.

- Authorize suspension of shipment of remaining 6,000 tons of surplus dairy products
- Authorize continuation of shipments for CARE pre-school feeding programs provided Polish government guarantees end-use checks

-- Economic Measures.

- Impose costs on both Polish and Soviet governments and give U.S. representatives a firm negotiating position to take with our Allies.

We feel that popular support for the Polish people in Western Europe, especially from labor organizations, will make our Allies increasingly receptive to our firm approach. The key next step in consultations with Allies will be a Quadripartite meeting of Political and Economic

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Directors of the U.S., UK, France, and the FRG on December 22 in London. U.S. willingness to follow through on meaningful punitive measures will of course be an important element in gaining Allied agreement to similar measures.

On the basis of the Quadripartite discussions, we hope to be able to recommend additional unilateral and multilateral steps suitable for contingencies and as leverage for promoting a compromise settlement in Poland.

The AFL-CIO has decided that U.S. dockworkers will refuse to handle any cargo bound for Poland except humanitarian assistance. Organized labor is willing to work with us on defining what constitutes humanitarian assistance.

Finally, the fourth attachment to this paper is a memorandum on the legal implications of recent governmental actions in Poland.

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SECRET1981 POLICY DEBT RESCHEDULING:
THE "EXCEPTIONAL CIRCUMSTANCES" CLAUSE

On April 27, 1981, Poland's 15 major Western creditors reached agreement on the terms for rescheduling Poland's official and officially guaranteed debt service payments which were due and unpaid as of May 1, 1981 and which fell due between May 1, 1981 and December 31, 1981. This agreement provided debt relief of approximately \$2.4 billion, of which the U.S. share was \$380 million. We believe that all participating creditor countries have now completed the necessary bilateral negotiations with Poland to implement this multi-lateral recommendation on terms.

The Agreed Minute signed in April included an "exceptional circumstances" clause. This clause provides for the suspension of the agreement by any participating country. There is a gentleman's agreement for consultations among the creditors prior to any country exercising this right. "Exceptional circumstances" were defined orally by the chairman of the meeting as the invasion of Poland by external forces or the use of Polish forces to suppress the Polish citizenry.

If the U.S. exercises its right to invoke the "exceptional circumstances" clause, the full amount of \$380 million will be due. The Poles do not have funds available to meet these payments. Furthermore, other countries would invoke the clause to assure that the U.S. was not treated as a preferred creditor at some future date if and when the Poles could pay. The private banks for the same reason would end their rescheduling negotiations and demand full payment on the \$3 billion owed them. As a result, the Poles would be called upon to pay approximately \$5 billion immediately. There is a high likelihood in this situation that one of the 460 Western banks with Polish liabilities would enter default proceedings in court to place liens against Polish property. This would produce a legal asset freeze and seriously disrupt (but not stop) Polish trade.

Policy Issue:

Should the U.S. invoke the "exceptional circumstances" clause of the 1981 debt agreement?

- Pro -- Would indicate that the U.S. takes seriously the Polish military suppression.
- Would severely hamper Polish economic recovery since their economy is dependent on the West for key inputs, both for the industrial and agricultural sectors.

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- Con -- Would end any Polish payments on their Western debt and eliminate an economic lever we can use later.
- Could cause instability in the German banking system given that some middle-sized banks who are over-exposed will fail.
- Would reduce the possibility of recovery of U.S. interests and principal.

It is recommended by State and Treasury that it would not serve U.S. interest to invoke the "exceptional circumstances" clause at this time.

_____ Agree _____

Disagree

Policy Issue: (Only if the above is disagree)

The private banks are to conclude the 1981 rescheduling December 28. The Poles do not have the \$350 million due in back interest to close this deal. The banks may declare a default or leave the issue open for further negotiation. If they declare a default and go into court, the governments to protect their claims would have to follow suit. Declaration of default by the banks would have the same effect as the U.S. invoking the "exceptional circumstances" clause.

Assuming the U.S. banks are not paid, should the U.S. government communicate to the banks its desire not to have default proceedings at this time?

- Pro -- Would reduce the possibility of private banks preempting a future U.S. Government action, thereby preserving our leverage.
- Con -- The U.S. Government should not be providing advice to U.S. banks on commercial transactions.
- U.S. approach to banks could leak and be seen as a weak U.S. response.

There is no agency agreement on this issue.

Options:

1. Contact leading banks and express U.S. desire that they continue to negotiate if there is no payment or agreement rather than declare a default.

_____ Yes _____

No

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2. Contact leading banks and indicate the U.S. Government is not invoking the "exceptional circumstances" clause at this time and therefore is not seeking a default situation.

_____ Yes _____ No

3. Do not contact U.S. banks in this issue.

_____ Yes _____ No

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All of the Agricultural Commodities that we have sold to Poland on government credit programs this year have been shipped. However, some of the surplus dairy products which we sold to Poland this year for Polish currency remain to be shipped. There are two categories:

- (a) Last April we sold \$71 million worth of dried milk and butter. The Polish Government has been taking delivery on this purchase in monthly increments. Approximately 6,000 tons (roughly 10 percent of the total) has not yet been shipped.
- (b) This fall we agreed to \$29 million worth of surplus dried milk and cheese to the Polish Ministry of Health to be used in a program for the feeding of children in pre-school day care centers, administered by CARE through the Ministry of Health. None of this has been shipped.

The dairy products from the first category go into the government distribution network for general use in Poland in any way the Polish Government sees fit. It would be an appropriate sanction at this point to hold up the shipment of the remaining 6,000 tons.

Agree _____ Disagree _____

On the other hand, the surplus dairy products from the CARE program are part of a large overall CARE program in Poland, which also involves the distribution of tens of thousands of CARE packages to the elderly and infirm, as well as several million dollars worth of food commodities to homes for the aged and to hospitals. CARE has an office in Warsaw headed by an American citizen resident representative. The surplus dairy products destined for the CARE program are humanitarian food aid directed to needy target groups. The United States is clearly identified as the donor. It would not be an appropriate sanction to suspend shipment of this aid, but we should demand guarantees that we can monitor its distribution.

Agree _____ Disagree _____

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SECRETECONOMIC MEASURES

There are a number of actions which we can take vis-a-vis Poland if the current situation continues:

-- Seek agreement with our allies to recommend to the IMF that consideration of the Polish request for membership be suspended; we could also do this unilaterally. This would be an important political signal; it would not have any financial impact on the Poles in the immediate future.

-- Reconsider the access of the Polish fishing fleet to U.S. waters. This may pose certain problems, because Polish and American firms have joint arrangements and contracts could be cut across. But in any case, this is only a minor signal.

-- Seek agreement among our allies on a "no exceptions" policy for Poland in COCOM. This would mean that no COCOM-controlled items would be approved for shipment to Poland.

-- Suspend renewal of export insurance for Poland by the Export-Import Bank. This would involve denying Ex-Im insurance for about \$25 million of U.S. exports to Poland.

There are also a number of things that can be done vis-a-vis the USSR:

-- Suspend negotiations indefinitely on a maritime agreement. The current agreement expires at the end of December, 1981. If there is no agreement, we can require the Soviets 14 days notice in advance of port calls, and make approvals on a case-by-case basis, contingent on the purpose of the call.

-- Refuse to set a new date for talks on a new long-term grain agreement (LTA). This would be a major signal to the Soviets, although there would be strong negative pressure from the U.S. farm community. (However, if this drifts to September, when the current agreement expires, it would work against us. We would lose the only instrument we have to limit Soviet grain purchases, other than a formal embargo.)

-- Encourage Western banks not to lend the \$200 million the Soviets now want to borrow.

-- Add the Polish situation to our arguments for a major tightening of COCOM controls on exports to the Soviets. Pursuant to agreement at the Ottawa Summit, we have planned a high-level COCOM meeting in January for this purpose; but our allies want a more general, political meeting, without a clear focus on the specific areas of militarily related technologies that we want to bring under control.

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-- Work with our allies to seek a halt to the export of oil and gas equipment to the Soviets, thereby halting work on the West Siberian pipeline. This stage of the Polish situation, however, is probably not sufficiently threatening to the allies to get them to change their minds.

-- Reconsider the International Harvester and Caterpillar export licenses. This would be a strong signal to the Soviets but also would hurt the American firms. We may wish to learn first whether other suppliers would take similar action to block their firms. (After Afghanistan, U.S. action blocking exports by Alcoa and Armco was undercut by firms from Germany and France.)

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In PolandDomestic Law

The extension of PL-480 food program benefits to a country requires a determination that the country is not controlled by a "foreign government or organization controlling the world communist movement." Poland is currently eligible for benefits under PL-480, but the provision of such benefits has been suspended pending the outcome of the Administration's review of the Polish situation. The relevant language in PL-480, quoted above, would provide a legal basis for revoking Poland's current eligibility for PL-480 benefits, should the President decide to do so.

Relevant provisions in the Trade Act of 1974 would also provide a legal basis for the President to determine that Poland was no longer eligible for MFN treatment as a result of recent GOP actions. In particular, Section 402 of the Trade Act renders any nonmarket economy country as to which the President determines that such country is restricting the freedom to emigrate ineligible for MFN treatment or participation in any USG program in which the US extends credits or credit guarantees or investment guarantees, directly or indirectly, and prohibits the President from concluding any commercial agreement with such country. Restrictions recently imposed on travel by Polish citizens out of Poland under the martial-law regime could provide a basis for such a determination.

Various provisions of the Immigration and Nationality Act of 1952 relating in particular to deferred voluntary departure, refugee status, and granting of asylum may be brought into play by events growing out of recent GOP actions. The Legal Adviser's Office is currently exploring such matters in more detail.

The events of this week also cast serious doubt on the possible eligibility of Poland for any of the forms of assistance provided under the Foreign Assistance Act, such as Economic Support Fund Assistance under Chapter 4 of Part II, which may be provided to promote the "economic or political stability" of the recipient. Section 620(f) of the Act provides that:

No assistance shall be furnished under this Act ... to any communist country. This restriction may not be waived pursuant to any authority contained in this Act unless the President finds and promptly reports to Congress that: (1) such assistance is vital to the security of the United States; (2) the

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recipient country is not controlled by the international communist conspiracy; and (3) such assistance will further promote the independence of the recipient country from international communism ...

(Poland is specifically named in this Section as a "Communist country" to which this prohibition applies.) Whether or not the President would, under present circumstances, be prepared to find that assistance would be vital to U.S. security and would promote Polish independence, recent events would make it much more difficult to conclude that the Polish government is presently not effectively controlled by the Soviet Union.

International Law

The actions of the Government of Poland under its decree of martial law might be inconsistent with the Universal Declaration of Human Rights (the Declaration) adopted and proclaimed by the United Nations in General Assembly Resolution 217A(III) of December 10, 1948, the International Covenant on Civil and Political Rights that entered into force on March 30, 1976 and was ratified by Poland on March 18, 1977, and the International Covenant on Economic, Social and Cultural Rights that entered into force on January 3, 1976 and was ratified by Poland March 18, 1977.

While the International Covenant on Civil and Political Rights in Article 4 provides that a Party State "may take measures derogating from [its] obligations under the present Covenant, it may do so only "[i]n times of public emergency which threatens the life of the nation." Further, such derogations may only be taken "to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law" Certain provisions of the Convention, under Article 4, may not be derogated from in any case. These include Article 6 ("...No one shall be arbitrarily deprived of his life") and Article 7 ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment..."). Reports of actions by the Polish Army may suggest that members of Solidarity, as well as other Polish citizens may have had these rights violated.

To the extent that the measures taken by the GOP are not "strictly required by the exigencies of the situation," other provisions of the Covenant on Civil and Political Rights [CCPR] as well as the International Covenant on Economic, Social Cultural Rights [CESCR] and the Universal Declaration of Human Rights may be violated. These include: (1) "the right to

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life, liberty, security of person, freedom from arbitrary arrest and detention (Articles 3 and 9 of the Declaration and Articles 6 and 9 of the CCPR) by acts of arbitrary detention on the basis of the ambiguous standard of "well-founded suspicion."

2) The right to freedom of movement and residence with the borders of each state and the right to leave one's own country by acts requiring permission to change residences, prohibiting freedom to leave Poland, and prohibiting the use of watercraft (Articles 13 of the Declaration and Article 12 of the CCPR).

3) The right of freedom of opinion and expression, including the right to receive and import information and ideas through any media and the right to freedom from interference in one's correspondence (Article 19 of the Declaration and Articles 17 and 19 of the CCPR).

4) The right to freedom of peaceful assembly (Article 20 of the Declaration and Articles 21 and 22 of the CCPR).

5) The right to form and join trade unions for the protection of economic and social interests (Article 23 (4) of the Declaration, Article 22 of the CCPR; and Article 8 of the CESCR). The International Covenant on Economic, Social and Cultural Rights states that this right may be restricted only to the extent prescribed by law and which [is] necessary in a democratic society in the interest of national security or public order...." The Convention states explicitly that a Party State has an obligation to ensure the right of trade unions to establish national federations. It states further that there is to be no restriction on those obligations assumed under the International Labour Organization Convention of 1949 to which Poland is a party.

The Final Act of the Conference on Security and Cooperation in Europe, while not a legally binding international agreement, is considered to possess significant political and moral force as a statement of the intentions of the parties. Actions taken by the GOP since the imposition of martial law on December 12 - in particular, arrests of and prosecutions under summary procedures against individuals because of the exercise of their right to speak freely and to organize into labor unions in order to bargain collectively and engage in strikes - appear inconsistent with the commitments made by Poland as a Final Act signatory to "promote and encourage the effective exercise of civil, political, economic ... and other rights and freedoms

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all of which derive from the inherent dignity of the human person . . . , " and the reaffirmation to "act in conformity with the purposes and principles of the charter of the United Nations and with the Universal Declaration of Human Rights" also contained in the Final Act.

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